MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2015/2016

UIL2722 – ISLAMIC LAW II

(All Sections / Groups)

4 MARCH 2016
Reading Time : 3.00 p.m. – 3.15 p.m.
(15 Minutes)
Answering Time: 3.15 p.m. – 6.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 5 pages with 5 Questions only.

3. Attempt **FOUR** out of FIVE questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into Examination Hall CLEAN and ORIGINAL copy of Al Quran Translation.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

Suton, is a member of a deviant teaching cult which has persuaded him that women always wanted sex and that when they say "no" they really mean "yes". The cult's mission is to encourage its members to "give sexual pleasure to women". Suton decides that to be faithful to the cult's mission, he should have sex with his long standing friend, Tipah. Tipah has always made it clear that they will never be more than good friends, but now Suton believes that she does not mean this. He goes to her bedroom where she is asleep and climbs onto bed with her. She only vaguely recalls this incident the next morning since she took a sleeping pill the night before.

The following week, Suton went to his local supermarket. He picked up a jar of jam. Because he thought he was being watched he put it into the basket provided by the supermarket, intending to put it in his pocket when he got the opportunity to do so. He also put some bananas into the basket, intending to pay for these. When he arrived at the checkout he slipped the jam and one of the bananas into his pocket and paid for the other banana. As Suton walked towards the supermarket exit the store detective stopped him and asked him to empty his pockets. Suton took the jar of jam out of his pocket and hit the store detective with it, breaking his nose.

Discuss Suton's possible criminal liabilities and punishment(s) according to Islamic Criminal Law.

(Total: 25 marks)

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QUESTION 2

Amir died of cancer on 2 March 2015, at the age of 72. A week after his demise, his lawyer, Tetuan Azim read Amir's will which was made on 6 August 2013.

In 1967, Amir married Bariah. Together, Amir and Bariah had 3 children; Minah and Munah, born in 1970 and 1971 respectively, and Dolah, born in 1975.

In 1980, Amir and Bariah separated when Bariah was 4 weeks pregnant. They did not get divorced. Amir went to Australia in 1982 for a business trip where he met Ella and commenced living with her in 1986. In 1988, Amir and Ella had a child, Franco.

Amir and Ella were living together until at the date of Amir's death. They had continuously living together since 1986. They purchased a home together in Sydney Hill in 1995, each contributed 50% of the purchase price. They owned the property as joint tenants. They jointly paid their household expenses.

Amir had the following assets at the date of his death:

- *A bungalow house owned in his own name in Bukit Tunku, Kuala Lumpur (RM1.5 million)*
- *A BMW car 1982 E6 type*
- *A property owned in his own name in Castleville, New South Wales (RM500, 000)*
- *The property jointly owned with Ella in Sydney Hill, New South Wales (RM900, 000)*
- *A Mercedez –Benz C Class Saloon (RM400,000)*
- *Cash in a Central Bank account in his own name (RM1.2 million)*
- *CBA Shares (RM150, 000)*
- *RM600, 000 worth of uncut diamonds*
- *RM200, 000 worth of gold*
- *RM50, 000 worth of business equipment used at home in Castleville.*

According to the will, half of his assets are to be given to Ella and Franco.

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(Note: CBA Shares was given by Amir in 2010 to Ella including the diamonds and gold. Now, the shares are worth RM500,000. The Mercedez-Benz and the property in Sydney Hill was transferred from Amir to Franco's name in 2011)

Amir had the following liabilities at the date of his death:

- A mortgage of RM245, 000 on the Castleville property
- Credit card debt of RM25, 000

There are funeral expenses of RM2, 000.

Based on the above case:

(i) Discuss the validity of the will made by Amir.

(5 marks)

(ii) Explain how Amir's estate will be distributed if the Syariah Court rules out for the estates to be divided according to the Muslim law of inheritance.

(5 marks)

(iii) Discuss reasons for Amir's survivors to inherit his estate.

(5 marks)

(iv) Discuss the validity of estates given by Amir to Ella and Franco in 2010 and 2011 respectively.

(10 marks)

(Total: 25 marks)

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QUESTION 3

(i) Mahmud and Sidek are professionals and top mountain climbers. Both of them have jointly opened a business in mountain climbing training and tools centre. They often organize camps to train the young climbers apart from selling the climbing tools.

One day, Mahmud and Sidek led an expedition group of climbers at Mount Kilimanjaro in Tanzania. While climbing in Kilimanjaro valley, the group was hit by inclement weather that caused them to become trapped. The climb turned out to be worsen when a storm closed in and the winds began to wreak havoc, causing an avalanche (a sudden arrival or occurrence of ice or snow in overwhelming quantities). Sidek fall through a patch of thin ice and trapped in a crevasse (a deep open crack) with another climber (Charlie). Charlie died instantly due to broken neck after the fall. Sidek forced Mahmud to cut him and Charlie loose in order to find help and save the rest of the climbers at a safer ground. Mahmud cut the rope and left to seek help for rescue. After two weeks, no rescue team was at any sight and with no food and water, Sidek had no choice but to survive himself by consuming Charlie's flesh. He was found and saved by the rescue team after a month.

Sidek is now being charged for murdering Charlie in the Shariah Court.

Give the solution to this situation from the Islamic legal maxim point of view.

(15 marks)

(ii) Habits and customs ('Urf) have some sort of dominance over people's souls and minds. Whenever a norm is established in a society, it will become one of life's necessities. However, to be a legal basis the custom and usage should not contradict the injunctions of the Shariah.

Based on the above:

Identify and discuss the legal maxim based on its source, conditions, example and application.

(10 marks)

(Total: 25 marks)

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QUESTION 4

We cannot in any way touch upon the Islamic political system without talking about one of the main advantages of this system. Islam has brought about a great and magnificent human principle, namely the principle of *Shura* or consultation. Moreover, a surah (chapter) in the Noble Qur'an was named after that principle. It is called "*Shura*". This indicates the importance of this principle in all the affairs of Muslims.

Although scholars differ over the mechanism for the implementation of this principle in terms of being optional, preferable or obligatory, they are unanimous on the need to realize it among Muslims, as per Allah's saying: "...and consult them in affairs (of moment)..." [Al-Imran: 159].

Explain and elaborate the differences between *Shura* and Democracy.

(Total: 25 marks)

QUESTION 5

Gharar is variously defined in English as 'uncertainty' or 'deceptive uncertainty'. The Qur'an uses the word "al-gharūr" to mean "deceptive". Ibn Taymiyyah wrote that gharar exists in a contract when risk-taking is combined with the devouring of the property of one party by the other.

Discuss how uncertainty (gharar) in transaction creates disputes among contracting parties and how it is treated by Islamic Jurists in order to eliminate it.

(Total: 25 marks)

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